

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

EUGENE SCALIA, Secretary,
United States Department of Labor

PETITIONER

v.

No. 3:19-cv-322-DPM

NU-WAY PRODUCTS COMPANY, INC.,
d/b/a Nu-Way Pool & Spa

RESPONDENT

ORDER

1. The Court congratulates the parties on their agreed resolution. The Court requests some minor changes in the draft injunction. See attached. If they're acceptable, please send a revised and approved version to chambers.

2. Post-injunction joint status report due by 27 January 2020. If all's well then, the Court will vacate the injunction based on the changed circumstances and dismiss the petition without prejudice.

3. The 17 December 2019 hearing is cancelled.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

22 November 2019

~~The Court finds as follows:~~

3. The following conditions exist at the place of employment maintained by Respondent, Nu-Way Products Company, Inc. dba Nu-Way Pool & Spa, located at 220 Garrison Avenue in West Memphis, Arkansas, that present an imminent danger to employees which could reasonably be expected to cause death or serious physical harm:

a. Northwest and south walls of the building have broken, damaged, and displaced structural support columns, which have caused the walls to bulge and could potentially result in the building collapsing while employees are inside; and

b. Northeast and south sides of the building's roof have loose and missing metal sheets, which could result in the metal sheets or debris falling on employees working below.

4. These working conditions constitute an imminent danger within the meaning of Section 13(a) of the Act in that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger ^{could} be eliminated through the enforcement procedures otherwise provided by the Act.

~~Now, therefore, it is hereby ORDERED that:~~

5. Respondent, its officers, agents, servants, and those persons in active concert or participation with them are enjoined, pending the final disposition of this matter through the enforcement proceedings otherwise provided by the Act, ^{and must} ~~from failing to take~~ the following steps necessary to avoid, correct, or remove the ^{from not taking} ~~aforesaid~~ imminent danger:

a. Prohibit employees from entering the building, until the following actions (described below in subparagraphs b through e) have been completed. However, ^{But}

nothing in this Order shall be construed so as to limit the ability of owners and officers of Nu-Way Products Company, Inc. dba Nu-Way Pool & Spa, who are not also employees of Respondent, to occupy, ^{enter,} ~~ingress~~ and ^{leave} ~~egress~~ the property while the following actions (described in subparagraphs b through e) are ongoing¹;

- b. Repair the broken, damaged, and displaced structural support columns;
- c. Replace the missing sections of metal sheets on the roof;
- d. Secure the loose sections of metal sheets on the roof; ^{and}
- e. Arrange for a registered design professional to evaluate the building and confirm that the building is structurally safe.

^{2.6.} Each party shall bear his or her own attorneys' ² fees, costs, and other expenses incurred by ^{the} ~~such~~ party in connection with any stage of this proceeding to date including, but not limited to, attorneys' ³ fees which may be available under the Equal Access to Justice Act, as amended.

^{3.7.} The Court shall maintain ³ jurisdiction over this matter only for the purposes of enforcing this Order of Injunction, ^{until 28 February 2020.}

^{4.8.} The Respondent shall communicate the fact of the entry of this Order and its contents to all individuals who may be affected by it and shall prominently post copies of this Order at or near Respondent's place of employment where ^{the} ~~such~~ imminent danger exists and in any other location where ^{the} ~~such~~ posting will most effectively prevent any individual from exposure to ^{the} ~~such~~ imminent danger.

Dated this _____ day of _____, 2019.

BY THE COURT:

D. P. Marshall Jr.
v.s. District Judge

Date

The parties hereby consent to the entry of this agreed order of injunction.

FOR THE SECRETARY OF LABOR:

KATE S. O'SCANNLAIN
Deputy Solicitor of Labor

CONNIE A. ACKERMANN
Acting Regional Solicitor

MADELEINE T. LE
Acting Deputy Regional Solicitor

By:

/s/ Amy S. Hairston

AMY S. HAIRSTON
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DATE: November 21, 2019

FOR THE RESPONDENT:

Nu-Way Products Company, Inc.
Dba Nu-Way Pool & Spa

By:

/s/ Rodrick D. Holmes

Rodrick D. Holmes, AR # 2012091

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DATE: November 21, 2019